

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

City of Chicago. v. Cardinal Health Inc. et al.
Case No. 18-op-45281

**MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster**

**MOTION TO DISMISS FIRST AMENDED COMPLAINT BY
DEFENDANTS WALMART INC. AND CVS HEALTH CORP.**

Defendants Walmart Inc. and CVS Health Corp. (collectively the “Moving Defendants”) move to dismiss the Complaint filed by the City of Chicago pursuant to Rules 12(b)(1) and 12(b)(6). The Complaint must be dismissed for the following reasons:

1. The City lacks Article III standing to bring its claims because it alleges only harm that is common to the general public and derivative of harm incurred by third parties.
2. The Complaint purports to state claims against the Moving Defendants in their capacities as distributors, not dispensing pharmacies, and any claims against the Moving Defendants as dispensing pharmacies are manifestly insufficient under pleading rules.
3. The City fails to state any claims on which relief can be granted. The Complaint fails to allege facts showing that the Moving Defendants negligently distribute prescription

opioids, that the Moving Defendants' lawful distribution of a highly regulated product creates a public nuisance, that the Moving Defendants are liable to the City under an unjust enrichment theory, that the Moving Defendants engaged in a civil conspiracy, that the Moving Defendants engaged in unfair acts or practices in distributing opioids in the City as defined by city and state law, that the City is entitled to costs for municipal services, or that the Moving Defendants are liable under the Drug Dealer Liability Act for the legitimate distribution of lawful, controlled substances.

For these reasons, and as set forth more fully in the accompanying Memorandum of Law and in the motion submitted by Defendants McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation in which the Moving Defendants join, the Complaint must be dismissed.

Dated: 8 June 2018

Respectfully submitted,

/s/ Tara A. Fumerton

Tina M. Tabacchi
Tara A. Fumerton
JONES DAY
77 West Wacker
Chicago, IL 60601
Phone: (312) 269-4335
Fax: (312) 782-8585
E-mail: tfumerton@jonesday.com

Attorneys for Walmart Inc.

/s/ Eric R. Delinsky (consent)

Eric R. Delinsky
Alexandra W. Miller
ZUCKERMAN SPAEDER LLP
1800 M Street, NW
Suite 1000
Washington, DC 20036
Phone: (202) 778-1800
Fax: (202) 822-8106
E-mail: edelinsky@zuckerman.com
E-mail: smiller@zuckerman.com

Attorneys for CVS Health Corporation

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2018, this Motion to Dismiss was filed electronically on the master docket for this matter. Case Management Order One provides that “[e]lectronic case filing of a document, other than an initial pleading, in the master docket shall be deemed to constitute proper service on all parties.” ECF No. 232 at 8 (No. 1:17-MD-2804).

/ s/ Tara A. Fumerton

Tara A. Fumerton
JONES DAY
77 West Wacker
Chicago, IL 60601
Phone: (312) 269-4335
Fax: (312) 782-8585
E-mail: tfumerton@jonesday.com